

In the Matter of Merchant Mariner's Document No. DZ-103476  
Issued to: JIM YOUNG

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

1173

JIM YOUNG

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 19 May 1958, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a bellboy on board the United States SS LEILANI under authority of the document above described, on 12 July 1957, Appellant committed a lewd and lascivious act upon the person of a seven-year-old female passenger.

The decision of the Examiner contains an ultimate finding in the words of the specification, bare conclusions that the specification and charge were proved, and the general statement that the evidence as a whole supports the allegations. The entire balance of the brief decision pertains solely to the reasons why the Examiner accepts the testimony of the seven-year-old passenger as representing the truth as to what happened. No other issues are discussed or additional findings set forth.

Appellant's brief on appeal was not received until 21 January 1960 due to a considerable delay in transcribing the hearing record. Appellant contends that the Examiner should have considered six other important matters, in addition to the credibility of the passenger, particularly the credibility of the Appellant. These are:

1. The credibility of the Appellant.
2. The presence or absence of corroborating evidence.
3. The possibility that the child may have been mistaken.
4. The very good reputation of the Appellant.
5. The ease of making such a charge and the difficulty of disproving it.
6. The effect of the totality of the record.

APPEARANCE: Gladstein, Andersen, Leonard and Sibbett of San Francisco, by  
Norman Leonard, Esquire, of Counsel.

### OPINION

Undoubtedly, the Examiner should have considered and discussed in his decision the points raised on appeal since the record shows that they are material issues in the case. As stated in Commandant's Appeal Decisions Nos. 1057 and 1114, all decisions of the examiners are required by Title 5 U.S. Code 1007 (b) and Title 46 CFR 137.09-65 to "include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record--." This was not done.

In addition, Appellant has properly pointed out that "in determining whether there is substantial evidence in a record to support a finding, the finder of the facts must take into account not merely the evidence which justifies the finding sought to be made, but also must take into account 'contradictory evidence or evidence from which conflicting inferences could be drawn.' Universal Camera Corp. v. N.L.R.B. (1951), 340 U.S. 474, 487-8."

In view of these serious omissions by the Examiner, the finding and conclusion that Appellant was guilty are reversed and the record will be remanded.

### ORDER

The order of the Examiner dated at San Francisco, California, on 19 May 1958, is VACATED.

The case is REMANDED to the same Examiner for revision of his decision based on the record submitted at the hearing and on appeal.

REVERSED and REMANDED.

J. A. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 7th day of June, 1960.